

MEMBERS SITTING		VOTE OF THE BOARD				
		HON	GEN	UOHC	OTHER	DEPT
COL LLOYD F. LEROY						X
COL FREDRICK W. HORNICK						X
LT COL RICHARD M. STEDDING, JR.						X
LT COL STEVEN A. SIMON						X
LT COL NORMAN L. BURSON						X
ISSUES A94.05, 94.53, A93.01, A92.27, A 94.11, A92.01, A92.35, A92.21		INDEX NUMBER A64.00		EXHIBITS SUBMITTED TO THE BOARD		
HEARING DATE 980901		CASE NUMBER FD96-00284-A		1 ORDER APPOINTING THE BOARD		
				2 APPLICATION FOR REVIEW OF DISCHARGE		
				3 LETTER OF NOTIFICATION		
				4 BRIEF OF PERSONNEL FILE		
				COUNSEL'S RELEASE TO THE BOARD		
				ADDITIONAL EXHIBITS SUBMITTED AT TIME OF PERSONAL APPEARANCE		
				TAPE RECORDING OF PERSONAL APPEARANCE HEARING		
APPLICANT'S ISSUE AND THE BOARD'S DECISIONAL RATIONALE ARE DISCUSSED ON THE ATTACHED AFHQ FORM 0-454						
REMARKS						
Case heard at Dobbins, ARB GA.						
Advise applicant of the decision of the Board.						
SIGNATURE OF RECORDER <i>Steven A. Simon</i> STEVEN A. SIMON, LT COLONEL, USAF				SIGNATURE OF BOARD PRESIDENT <i>Lloyd F. Leroy</i> LLOYD F. LEROY, COLONEL, USAF		
INDORSEMENT				DATE 98/09/22		
TO: SAF/MIBR 550 C Street West, Suite 40 RANDOLPH AFB, TX 78150-4742				FROM: SECRETARY OF THE AIR FORCE PERSONNEL COUNCIL AIR FORCE DISCHARGE REVIEW BOARD 1535 COMMAND DR, EE WING 3rd Floor ANDREWS AFB MD 20331-7002		
ADVISE THE APPLICANT, NEXT OF KIN, LEGAL GUARDIAN OR OTHER OF THE BOARD'S DECISION. SEE REMARKS SECTION FOR ADDITIONAL INSTRUCTIONS.						

GENERAL: The applicant appeals for upgrade of discharge to Honorable and change of reason for discharge.

The applicant appeared and testified before the Discharge Review Board without counsel at Dobbins ARB, Georgia on September 1, 1998.

The attached brief contains the available pertinent data on the applicant and the factors leading to the discharge.

FINDINGS: Upgrade of discharge and change of reason for discharge are denied.

The Board finds that neither evidence of record nor that provided by the applicant substantiates an inequity or impropriety which would justify a change of discharge.

The applicant's issues are listed in the attached brief and at Attachment 2.

Issues 1 and 3 are similar and will be addressed together. The applicant contended he was the victim of double jeopardy and that the Air Force violated its own regulation by discharging him after issuing him a Letter of Reprimand (LOR) containing a warning against future misconduct. The Board carefully considered these issues, given the specific wording of the LOR. The Board concluded that, while the LOR addressed the specific incident, the discharge was initiated based on the pattern of misconduct, which included two prior alcohol incidents. While acknowledging that the LOR may have been inartfully worded and may have created a false impression, the Board concluded the discharge was appropriate and properly characterized.

Issue 2: The applicant claimed he was not given due process because he was denied an Administrative Discharge Board (ADB) and was not given sufficient time to present his defense. The Board noted the applicant did not raise the issues at the time of discharge by requesting either an ADB or a delay. Consequently, the Board found the issue to be without merit.

Issues 4 and 5 are similar and will be addressed together. The applicant stated the positive aspects of his service were not considered during the discharge proceedings and that his records reflect outstanding performance. The Board found no evidence that the applicant's records were not reviewed at that time. While true that the discharge recommendation memorandum contained the statement, "Favorable communications, citations, or awards: None.", the applicant's complete record was available for review. The Board reviewed the applicant's record and, while being impressed with the quality of his service, found the negative aspects of his service outweighed the positive, rendering the General characterization proper.

Issue 6: The applicant claimed his record of civilian convictions indicates only an isolated offense. While true the 1988 offense was the only case of civilian involvement, the applicant was involved in two other incidents of a similar nature. The Board determined the issue did not warrant an upgrade.

Issue 7: The applicant contended that, since he was so close to discharge, he should have been permitted to separate with an Honorable discharge. The Board found this issue to be without

merit, as the Air Force is under no obligation to allow an individual to leave the service with an Honorable discharge before completing his obligation, especially when the separation is for misconduct.

Issue 8: The applicant stated his ability to serve was impaired by his youth, immaturity and personal problems. The Board was unable to accept these reasons as explanation for his misconduct. While the first two incidents occurred early in his career, the final offense took place when the applicant was 23 years old and after he had received extensive alcohol counseling. Any youth and immaturity problems he had had early in his career should have been solved by that time. While finding the issue to be without merit, the Board was saddened by the applicant's loss of his father and grandfathers, and offers its condolences.

Issue 9: The applicant cited his post-service conduct as justification for an upgrade. The Board was impressed with the steps the applicant has taken to improve his life. It was clear the applicant is a dedicated and hard-working individual. The Board wishes the applicant continued success in this regard, but finds no inequity or impropriety in the issue upon which to base an upgrade.

Issue 10: The applicant contended the discharge was too severe and has adversely impacted his post-service progression. The Board determined that the characterization and narrative reason for the discharge accurately portrayed the situation at the time of the discharge. They do not reflect the caliber of the person, only the overall quality of service during that specific period of time. The Board is aware that an unfavorable discharge sometimes affects an individual's life in other ways, but these are collateral consequences of the discharge and not matters of equity or propriety.

CONCLUSIONS: The Discharge Review Board concludes that the discharge was consistent with the procedural and substantive requirements of the discharge regulation and was within the discretion of the discharge authority and that the applicant was provided full administrative due process.

In view of the foregoing findings, the Board further concludes that there exists no legal or equitable basis for upgrade of or change of reason for discharge, thus the applicant's discharge should not be changed.

2 Attachments:

1. Examiner's Brief
2. Additional Issues

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

FD 96-00284-A

(Former SRA)

1. **MATTER UNDER REVIEW:** Appl rec'd a GEN Dish fr USAF 88/10/27 UP AFR 39-10, 5-27a (Misconduct - Discreditable Involvement w/Civil or Mil Auth). Appeals for HON Disch & Change Reason for Disch.

2. **OTHER FACTS:**

a. See attached cy of Examiner's Brief dtd 97/02/19. (Case #FD96-00284)

b. The AFDRB reviewed case on 97/03/12 (non-appearance w/o counsel) & concluded applicant's discharge should not be changed.

3. **BASIS ADVANCED FOR REHEARING:** Appl (DD Fm 293) dtd 97/04/25. (Change Discharge to Honorable & Reason for Disch)

ISSUE 1-10: (See attached statement)

ATCHS

1. Applicant statement, undated.
2. APRs dtd 83/09/15 - 88/07/02.
3. Training certificates & diplomas.
4. Letters of Appreciation (3).
5. LOR, 88/08/15.
6. AF Form 418, enld/nco status consideration, 88/08/15.
7. Letter of Notif, dtd 88/10/13.
8. Recommendation for Discharge, dtd 88/10/13.
9. Receipt of Ltr of Notif, dtd 88/10/13.
10. Disch ltr, dtd 88/10/18.
11. Approval of Request for Discharge, dtd 88/10/25.
12. Applicant statement, undtd.
13. DD Form 214.
14. Personal Resume.
15. Letters of Recommendation (8).
16. Certificates of Training (22).
17. College Transcripts (5).
18. Certificates of Completion (9).
19. Copies of Identification Cards.
20. Green Cross Award.
21. High School Diploma.
22. Motor Vehicle Report.
23. Press Release.

97/05/21/ai

DEPARTMENT OF THE AIR FORCE
AIR FORCE DISCHARGE REVIEW BOARD
ANDREWS AFB, MD

[REDACTED]
(Former SRA)

1. MATTER UNDER REVIEW: Appl rec'd a GEN Disch fr USAF 88/10/27 UP AFR 39-10, Para 5-27a (Misconduct - Discreditable Involvement w/Civil or Mil Auth). Appeals for HON Disch & Change Reason for Disch.

2. BACKGROUND:

a. DOB: 64/11/14. Enlmt Age: 18 10/12. Disch Age: 23 11/12. Educ: (RIP reflects) 15-29 S/H. AFQT: Unk. AQE: M-63, A-69, G-55, E-68. PAFSC: 57150 - Fire Protection Spec. DAS: 88/07/26.

b. Prior Sv: AFRes 83/05/13 - 83/09/14 (4 Mos 2 Das) (Inactive).

3. SERVICE UNDER REVIEW:

a. Enld as AB 83/09/15 for 6 yrs. Svd: 5 Yrs 1 Mo 13 Das, all AMS.

b. Grade Status: A1C 83/11/01
Amn 84/06/28 (Vac of Art 15 dtd 88/06/28)
SRA 86/12/28
Sgt 87/12/01
SRA 88/08/15 (NCO Status vac)

c. Time Lost: None

d. Art 15's: (1) 84/06/28, Tyndall AFB, you were, o/a 84/06/19, drunk & disorderly in station. (Oral/written mitigation). Rdd to Amn (Susp until 84/12/25), forf \$75 for 2 mos, & 30 das CC. (No appeal). Vac of Susp, 84/11/14, you did, o/a 84/10/26, at Illinois Gate, operate a veh, to wit: a passenger car, while drunk.

e. CM: None

f. Record of Sv:

83/09/15	84/09/14	Tyndall AFB	8	(Annual)
84/09/15	85/09/14	Tyndall AFB	9	(Annual)
85/09/15	86/09/14	Tyndall AFB	9	(Annual)
86/09/15	87/02/24	Tyndall AFB	9	(CRO)
87/02/25	88/02/24	Galena Aprt	9	(Annual)
88/02/25	88/07/02	Galena Aprt	8	(CRO)

(Dischd fr F E Warren AFB)

g. Awards & Decs: AFLSA, AFTR, SAEMR, AFOUA

h. Stmt of Sv: TMS: 5 Yrs 6 Mos 15 Das
TAMS: 5 Yrs 1 Mo 13 Das

4. BASIS ADVANCED FOR REVIEW: Appln (DD Fm 293) dtd 96/05/28

(Change Discharge to Honorable)

(Change Reason for Discharge to): Reflect accurately applicant's service

ISSUE 1: See Attachments. 10 Issues, 5 pages

ISSUE 2: See Attachments.

ISSUE 3: See Attachments.

ISSUE 4: See Attachments.

ATCHS

Ltr fr Attorney

Issues 1 thru 10 (Cy atchd to Examiner's Brief)

Cy of APRs

40 Certificates

2 Ltrs of Appreciation

Ltr to Amn's Mother

Portion of Disch Pkg

3 Ltrs of Recmdn

Char Ref

Motor Veh Rpt

97/02/19/pls



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 90TH COMBAT SUPPORT GROUP (SAC)
FRANCIS E. WARREN AIR FORCE BASE, WYOMING 82005-5000



REPLY TO
ATTN. OF:

90 GES/CCQ

13 October 1988

SUBJECT:

Letter of Notification

TO:

1. I am recommending your discharge from the United States Air Force for misconduct, specifically, discreditable involvement with military or civilian authorities. The authority for this action is AFR 39-10, paragraph 5-47a. If my recommendation is approved, your service will be characterized as honorable or general. I am recommending that your service be characterized as general.

2. My reasons for this action are your continued misconduct resulting from the use of alcohol as evidenced by:

a. 90 GES/CC Letter of Reprimand, 15 Aug 88, in which you were arrested and charged by the Cheyenne Police Department with driving a passenger car while under the influence of alcohol.

b. AF Form 366, Record of Proceedings of Vacation of Suspended Nonjudicial Punishment, 14 Nov 84, in which you did at Tyndall AFB, Fl, on or about 26 Oct 84, operate a passenger car while drunk.

c. AF Form 3070, Notification of Intent to Impose Nonjudicial Punishment, 22 Jun 84, in which you were at Tyndall AFB, Fl, on or about 19 Jun 84, drunk and disorderly in station.

Copies of the documents to be forwarded to the separation authority in support of this recommendation are attached. The Commander exercising SPCM jurisdiction or higher authority will decide whether you will be discharged or retained in the Air Force and how your service will be characterized. If you are discharged, you will be ineligible for reenlistment in the Air Force.

3. You have the right to consult counsel. Military legal counsel has been obtained to assist you. I have made an appointment for you to consult Capt [redacted] at building 152, on 14 October 1988 at 1030. You may consult civilian counsel at your own expense.



4. You have the right to submit statements in your own behalf. Any statements you want the separation authority to consider must reach me by 18 October 1988 unless you request and receive an extension for good cause shown. I will send them to the separation authority.
5. If you fail to consult or to submit statements in your own behalf, your failure will constitute a waiver of your right to do so.
6. You have been scheduled for a medical examination. You must report to the 90th Strategic Hospital, at 0700, on 17 October 1988 for this examination.
7. Any personal information you furnish in rebuttal is covered by the Privacy Act Statement as explained in AFR 39-10, attachment 6. A copy of AFR 39-10 is available for your use in the 90 CES unit orderly room.
8. Execute the attached acknowledgement and return it to me immediately.

[REDACTED]
[REDACTED]
[REDACTED] Squadron Section Commander

USAF

2 Atchs

1. Supporting documents for discharge
 - a. 90 CES/CC Ltr of Reprimand, 15 Aug 88
 - b. AF Form 366, 14 Nov 84
 - c. AF Form 3070, 22 Jun 84
2. Airman's receipt of letter of notification

ISSUE 1. The discharge was too severe based on the incident.

[REDACTED] received a Letter of Reprimand (LOR) on August 15, 1988 for a DUI offense which occurred on July 28, 1988 (see B-1). The LOR specifically stated that "Further incidents of this nature could result in more severe action taken against you". However, in spite of the warning the command chose to take steps to discharge [REDACTED] in spite of the fact that there were no more incidents prior to his discharge. [REDACTED] had been an outstanding Airman prior to this incident as reflected in his evaluation reports, recommendations and other certificate of achievements he had received. He was also reduced from the rank of Sergeant/vacation of NCO status (see B-2); one year suspension of military driving privileges (see B-3); for the same incident and penalized by the civilian authority.

ISSUE 2. The discharge constitutes double jeopardy.

[REDACTED] was given a Letter of Reprimand for this offense; driving privileges suspended for one year by the military; punished by the civilian authority; reduced from the rank of Sergeant; and then discharged under other than "Honorable" conditions (see C-1) which impacts on his ability to obtain certain types of civilian employment. In reality he was punished five times for the same offense.

ISSUE 3. [REDACTED]'s Constitutional Rights were violated in that he did not receive due process of the law.

Due process required a full hearing in this matter which was not afforded to [REDACTED]. He was notified of the recommendation of the Command to "discharge" him on October 13, 1988 and was discharged on October 27, 1988. [REDACTED] was not afforded the time nor opportunity to adequately prepare his defense. He only had the opportunity to prepare a statement on his

behalf, nothing more (see B-9). The law does require one to have adequate time to prepare for their defense to include gathering and presenting favorable information on their behalf and right of confrontation.

ISSUE 4. The Air Force violated its own regulation concerning the discharge of [REDACTED]

Pursuant to AF Regulation, the Command was not suppose to start discharge processing for a pattern of misconduct, "until the member has been counseled about the deficiencies and given a chance to overcome them". In this instant case, [REDACTED] was given a Letter of Reprimand on August 15, 1988 and warned that "Further incidents of this nature could result in more severe actions taken against you". Instead of working to rehabilitate him, the command chose to discharge him. The "more severe action" discharge was immediately taken against [REDACTED]. The Command took no action to rehabilitate a "valuable airman" as noted by his evaluation reports and other merit awards and commendations.

ISSUE 5. [REDACTED]'s military records reflected outstanding performance.

He received six (6) performance evaluations during the period of September 14, 1984 to July 2, 1988 (see A-1-A-6), which reflected nothing less than "outstanding performance" on his part. His conduct, performance evaluations and military behavior was outstanding even during the time frame of the 1988 DUI incident. He received 8 and 9 numerical ratings on his reports with 9 being the highest possible score. During his Military career he received all 9 overall ratings on four (4) of the six reports that he received. The other two (2) ratings were also outstanding with an overall 8 numerical score. [REDACTED]'s performance evaluations indicated that he was a hard working, dedicated airman who contributed to his unit and exhibited outstanding potential for advancement. His overall performance scores are as listed:

14 Sep 84- 8
14 Sep 85- 9
14 Sep 86- 9
24 Feb 87- 9
24 Feb 88- 9
02 Jul 88- 8

[REDACTED] also received letters of commendations and other acts of merit during his tenure with the military (see A7-A19).

ISSUE 6. [REDACTED]'s record of conviction by civilian authorities while he was in service indicates isolated offenses.

The DUI offenses of 1988 and 1984 were approximately four (4) years apart and there were no other incidents of involvement with civilian authorities. His military record during this time did not show any violation of military order or discipline. There was no evidence that the civilian misconduct affected the quality of his individual service to the military or that it had adversely impacted on overall effectiveness of the military service. His record taken as a whole indicates that he was a dedicated, hardworking individual who made a mistake.

ISSUE 7. [REDACTED] was so close to finishing his tour that it was not in the best interest of justice to give him a General Discharge.

He entered the military September 15, 1983 for a six (6) year obligation. His discharge was effective October 27, 1989, approximately 11 months from his expected discharge date.

The DD 214 reflects under the narrative reason for discharge "Misconduct-Pattern of Discreditable Involvement with Civilian or Military Authority". Justice would have been better served had he been allowed to resign and receive an Honorable Discharge. The impact from this situation has caused him serious problems in pursuing civilian career options.

ISSUE 8. [REDACTED] a ability to serve during the time of the incidents was impaired by his youth, immaturity and personal problems.

He entered the military approximately three (3) months after graduating from high school. Mr. [REDACTED] did not have the life experiences one gains after living for awhile. He did not realize the impact his conduct would have on him, his career or his ability to obtain suitable employment after leaving the military.

[REDACTED] experienced several deaths of close family members during his tenure in the military. His father and both grandfathers died during this time. His father died of brain cancer and his step-mother influenced him to change his will and leave [REDACTED] and his brother out. He was very close to his father and this caused him great anxiety and depression.

ISSUE 9. [REDACTED] is a model citizen of his community.

He has worked hard to establish himself in the community and be a model citizen. Since the military [REDACTED] has married, fathered a child and maintained stable employment. However, the "other than Honorable Discharge" has hindered him from obtained certain jobs that he is qualified for. He has shown to be a dedicated, honest citizen of his community (see D1-D35).

ISSUE 10. Recommendation for discharge was unfounded and based on false and omitted information.

The Recommendation for discharge of [REDACTED], dated 13 October 1988 (see B-5), contained inaccurate information. Item 2.f indicates that his date of promotion to Sergeant and A1C are wrong and should be Sgt.-Dec 87 and A1C Nov 83. Item 2.k omitted all favorable information pertaining to [REDACTED] (see A-1-A19 and C-1 item 13). In fact this section indicates that there are no favorable communications, citations, or awards. [REDACTED] had in fact received numerous favorable communications, citations and awards. This entire document

falsely portrayed [REDACTED]'s character, work ethics and loyalty to his country and the U. S. Air Force. His outstanding evaluations and awards clearly paint a different picture than this document. [REDACTED]'s desire was not to receive anything less than an "Honorable Discharge". He had a great devotion for the military especially since his father was a highly decorated "Vietnam veteran".

In view of the above Issues and explanations, [REDACTED] discharge should be upgraded to "Honorable".